a manner which is dangerous to the public", to use the words of section 10 (1) of Cap. 214, is not driving "in a careful manner and with due regard for the safety of others" to use the words of the Regulation, and that therefore the first conviction may be regarded as a conviction under the Regulations, though in fact it was under the Ordinance.

However attractive this view is, it is not a safe one to adopt. Under section 10 it is not essential that any person should actually be put in peril, while under the Regulation it is at least arguable that the safety of some other person must actually be imperilled. The offences may be different in more than degree.

These are penal provisions and they must be construed strictly, and I think that a second or subsequent offence in Regulation 81 implies that the person has already been convicted under the Regulations and that it does not cover a previous conviction for an analogous offence committed against an Ordinance different to the Ordinance under which the Regulations were made.

The suspension of the licence is authorised by section 6 of the Traction Engines and Motor Cars Ordinance which refers to offences in respect of motor cars, whether the offences are under the Ordinance or not.

The fine of $50 is more than can be imposed for a first offence under the Regulations. It must consequently be reduced, and I reduce it to $10 or seven days simple imprisonment. The licence I presume has not been suspended during the pendency of this appeal. If this is so, the Magistrate's order suspending the licence for three months will take effect as from 3rd October 1941.

Save as to the variations above-mentioned the appeal is dismissed.

As the fine has been paid $40 must be refunded to the appellant.

*Fine Reduced.*

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## YONG YONG PENG v. REX.

**[App. Crim. Juris. (McElwaine, C.J.) September 22, 1941]**

*Penal Code, Section 420—Cheating—Giving of a cheque which was later dishonoured in circumstances showing that there was an implied representation that the cheques would be met—Circumstances showing that accused had no intention to pay for goods—Fraudulent Debtors Ordinance, Section 3 (a).*

In this case the appellant had been convicted of two charges of cheating (1) that he did on or about the 10th March 1941 cheat Yap Chan Guan by deceiving him into believing that a cheque for $150.00 would be met and so induced the said Yap Chan Guan to deliver 10 bags of flour and (2) that he on or about the 11th of March 1941 cheated Chua Tian Seng by deceiving him into believing that a cheque for $209.19 would be met on presentation and so induced the said Chua Tian Seng to deliver him 13 dozen tins of "Barlova". It appeared that the appellant was the partner, if not the sole proprietor, of a shop Chop Ban Seng Chiang which had a bank account. In 1941 the business declined and on the 11th of March 1941 there was a balance of $3.12 in the Chop's banking account. The appellant kept the books of the Chop. On the afternoon of the 12th March the Chop vacated its premises at 12 Merchant Lane, taking with them some cases and sacks but leaving behind the Chop signboard and the seals.

**Held,** (1) that an essential ingredient in the offence of cheating is a dishonest intention at the time of obtaining the money or the goods;

(2) that there was evidence in this case of a false representation of an existing fact and also evidence of a fraudulent intent and that therefore the appellant was rightly found guilty of the offence of cheating;

(3) that in any case the evidence showed that the appellant had no intention to pay at the time he got the goods, and that he was therefore guilty under Section 3 (a) of the Fraudulent Debtors Ordinance.

*Cases referred to :—*

(1) *Lee Kang Wye v. Ng Ah Min,* 4 Kyshc 335.

(2) *R. v. Hazelton,* 44 L.J.M.C. 11.

(3) *Edgington v. Fitzmaurice,* 29 Ch. D. 483.

(4) *R. v. Thompson,* 5 Cr. App. R. 9.

*MAGISTRATE'S APPEAL.*

Appellant in person.

*E. N. Griffith-Jones* for the respondent.

**McElwaine, C.J.** :—The appellant and one Tan Chok Keun were associated in a Chop known as Ban Seng Chiang which I shall refer to as the Chop. Both were charged with cheating and at their trial each swore that the other was the proprietor of the Chop and himself only a servant.

The learned District Judge found as a fact that the appellant was a partner, if he was not the sole proprietor, and there was evidence to support this finding.

The Chop was in business from 1st July 1940 and possibly from an earlier date. It had a Bank

account which was not large, but which does not appear to have been overdrawn. On 8th March 1941 $57 cash was deposited, giving a credit balance of $103.12. On the 11th a cheque for $100 was paid, leaving a balance of $3.12.

On the 13th February 1941 the appellant rented a counter at 12 Merchant Lane telling the landlord's agent that he might stay for only one month. The Chop vacated these premises on the afternoon of 12th March, taking with them some cases and sacks containing what appeared to be flour. The Chop signboard and some seals were left behind. Appellant was the last to leave taking the accounts with him.

On the afternoon of 12th March search for the Chop and the appellant began. A report was made to the police on 21st June and the same day the police found the appellant, who, subsequently with Tan Chok Keun, was charged with cheating by means of worthless cheques.

Tan Chok Keun was acquitted but the appellant convicted on two charges.

The cheques, which were signed by the appellant, were drawn on the account of the Chop which had a credit balance of $3.12. In the first charge the appellant was charged that he did on or about 10th March 1941 cheat Yap Chan Guan by deceiving him into believing that a cheque for $150 would be met and so induced Yap Chan Guan to deliver 10 bags of flour.

The flour was bought on behalf of the Chop by a broker who bought on the instructions of Tan Chok Keun, who was ultimately charged with appellant and acquitted. It was a cash sale.

The delivery note was handed by Yap Chan Guan to the broker on 10th March. This delivery note the broker handed to Tan Chok Keun. There is a confusion of dates in the evidence. Yap Chan Guan says the sale to the broker was on 12.3.41 and that next day (which would be the 13th) an assistant from the Chop came to him with the delivery note and a cheque for $150. I think 12th a mistake for 10th or 11th, because this witness says the cheque was returned by the bank on the 12th and the broker makes it clear that the sale was on the 10th. Yap Chan Guan does not say directly that he gave the flour to the Chop assistant in exchange for the cheque, but this is implied in his statement "I would not have given the delivery order and the flour to Ban Seng Chiang's coolie had I known that I would not get paid in cash. I thought the cheque was genuine." He gave the delivery order to the broker, not to the assistant or coolie. This witness had twice before in the present year been paid by the Chop cheques when they had been honoured.

The second charge was that he on or about 11th March 1941 cheated Chua Tian Seng by deceiving him into believing that a cheque for $209.19 would be met on presentation and so induced Chua Tian Seng to deliver him 13 dozen tins of "Barlova".

On the 10th March the appellant and Tan Chok Keun went to Chua Tian Seng's office and ordered the "Barlova" which was delivered to them the same day in return for the cheque. The cheque was given because the appellant said he could not get money because it was after banking hours.

The appellant was accustomed to dealing with both the persons said to have been cheated and he knew that their terms were cash on delivery.

The offence of cheating is very similar to the English offence of obtaining goods by false pretences. An essential ingredient is a dishonest intention at the time of obtaining the money or goods; *Lee Kang Wye v. Ng Ah Min*[1].

The giving of a cheque is not necessarily a representation that the drawer is in credit with his bank to the amount of the cheque, but there is an implied representation that the cheque is a good, valid and genuine order for payment: *R. v. Hazelton*[2]. There was no evidence that the Chop or the appellant had authority to overdraw, and in fact the account never had been overdrawn, so there was nothing to lead the appellant to think that the Bank would honour the cheques.

The appellant and the complainant knew that the transactions were cash transactions, and I think there was an implied representation that the cheques would be met. The appellant kept the books of the Chop and must have known the state of the accounts. The fact that the Chop closed down the very day on which notice of dishonour was given, and that everything of value was removed, is distinct evidence of fraudulent intent, and that evidence is enhanced by the fact that the seals and signboard were left behind—an indication that the Chop was not going to re-open elsewhere.

I think there was false representation as to an existing fact and that the offence charged was committed.

There is no doubt whatever that the appellant represented that he intended to pay for the goods and that he had no such intention. It seems to me that a representation under such circumstances is itself a false representation of an existing fact. "The state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is, therefore, a misstatement of fact" per Bowen L.J. in *Edgington v. Fitzmaurice*[3]. If there was no false pretence as to the cheque still, this man had no intention to pay at the time he got the goods. That is indicated by his disappearance with the goods as soon as he received them. If a man obtains goods and never had any intention to pay for them, that is fraud other than false pretence: *R. v. Thompson*[4]; and an offence under the Fraudulent Debtors Ordinance.

It is to my mind clear that the appellant was guilty either of cheating as charged, or under the Fraudulent Debtors Ordinance, if not under both Section 420 of the Penal Code and Section 3 (a) of the Fraudulent Debtors Ordinance.

The sentence of six months on each charge, the sentences to be concurrent, is certainly not excessive.

The appeal is dismissed.

*Appeal Dismissed.*